



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 30 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Bi-Annual Reporting of Tribal Consultation Activities

FROM: Lisa Lund, Director
Office of Compliance

A handwritten signature in purple ink, appearing to read "Lisa Lund", is written over the printed name and title of the sender.

TO: OECA Office Directors
OECA Division Directors
Regional Enforcement Coordinators
Regional Enforcement Division Directors
Regional Counsel

The purpose of this memorandum is to ask the Office of Enforcement and Compliance Assistance (OECA) and Regional enforcement staff to record consultation actions into the [Tribal Consultation Opportunities Tracking System](#) (TCOTS) by October 1, 2012 (see attached directions).

The [EPA Policy on Consultation and Coordination with Indian Tribes](#) (Consultation Policy) provides that consultation with tribal governments should occur when EPA actions "may affect tribal interests." The Consultation Policy contains a non-exclusive list of EPA activity categories that are normally appropriate for consultation if they may affect tribes: regulations or rules; policies, guidance documents, directives; budget and priority planning development; legislative comments (when possible due to short legislative timeframes); permits; civil enforcement and compliance monitoring actions; response actions and emergency preparedness actions; state or tribal authorizations or delegations; and international treaty agreements.

The Consultation Policy further requires that every six months EPA offices report to the American Indian Environmental Office (AIEO) on matters about which tribal consultation has taken place, is ongoing, or is expected to be undertaken in the upcoming six-month period. The next report to AIEO is due on October 1, 2012. AIEO developed TCOTS as a means for offices to efficiently record their consultation actions for use by AIEO to submit an annual report to the Office of Management and Budget.

OECA is developing guidance for OECA and regional enforcement and compliance assurance staff on implementing the provisions of the Consultation Policy. The guidance will provide direction on determining whether to consult on enforcement and compliance assurance activities, establish a clear process to use when undertaking consultation activities, and designate specific OECA consultation points of contact to assist in implementing the Consultation Policy. In the interim, decisions regarding reporting policies and guidance and other OECA activities will be made on a case-by-case basis in consultation with OECA's Tribal Consultation Advisor, Jonathan Binder.

Per guidance issued jointly on September 20, 2011 and March 16, 2012 by the Office of Compliance and the Office of Civil Enforcement, for consultations before or during civil compliance monitoring activities, civil administrative enforcement actions, compliance plans, or other activities in the enforcement response process, OECA and regional staff should only report on past consultations. While consultation on such matters may be anticipated, actually underway, or widely known, compiling a list prior to disclosure to the general public of our intent to proceed with an enforcement action may lead to the release of privileged or otherwise sensitive enforcement information. In this regard, a civil enforcement action means the filing of an administrative complaint, issuance of a unilateral order, or the filing of an administrative order on consent or consent agreement and final order. OECA does not plan to report on enforcement actions in negotiation, under development or those that have been referred to the Department of Justice. In addition, OECA is not submitting information regarding ongoing, anticipated or past criminal enforcement actions.

During the last reporting cycle, OECA committed to working with you to evaluate the need to develop additional guidelines regarding the reporting requirements. In response, OECA established a headquarters/regional workgroup to discuss the issue of whether to contemporaneously acknowledge consultation efforts prior to the filing or conclusion of an administrative enforcement action or civil judicial case. The workgroup determined that it was not necessary to develop a separate system to contemporaneously record such consultation actions and supports the retrospective reporting process outlined above.

The information concerning reporting tribal consultation activities contained in this memorandum will be incorporated into a compendium of materials which provides guidance for OECA personnel on implementing the Consultation Policy. The guidance is meant to be a living document and will be revised as appropriate. The guidance may be found on [OECA's Tribal Consultation website](#).

If you have any questions or concerns, please contact me or Jonathan Binder, the OECA Tribal Consultation Advisor, at binder.jonathan@epa.gov or 202-564-2516.

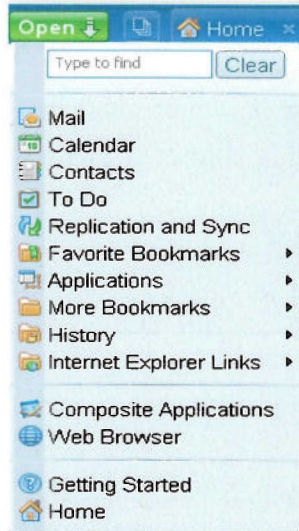
Attachment

cc: JoAnn Chase, AIEO
Karin Koslow, AIEO
Regional Tribal Consultation Advisors
OECA Indian Country Workgroup

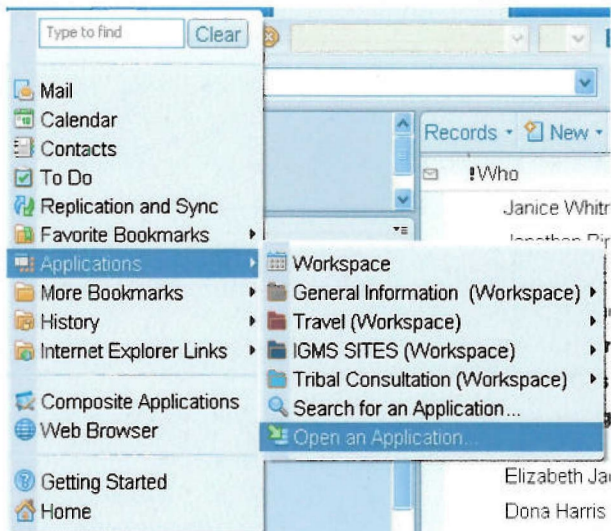
Accessing and Bookmarking EPA's Internal Tribal Consultation Tracking System

Follow these instructions to access and bookmark EPA's internal Tribal Consultation Tracking System through Lotus Notes. For assistance or problems, contact CTS.

1. From Lotus Notes (LN) menu bar – CLICK ON BIG ARROW TO OPEN DROP DOWN MENU



2. SELECT APPLICATIONS- SELECT "Open an Application"

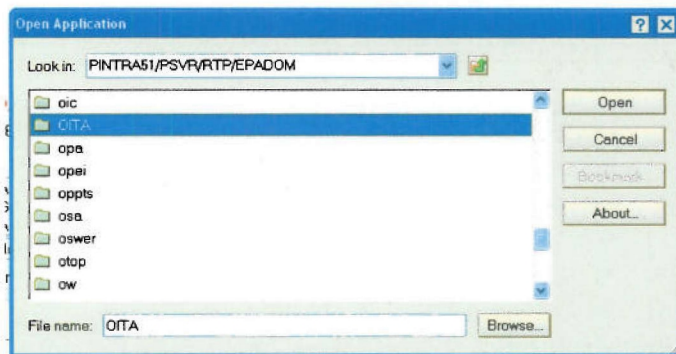


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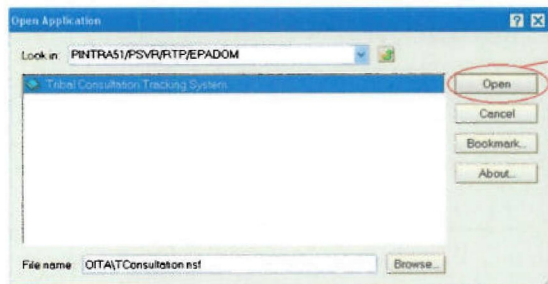
3. An OPEN BOX WILL APPEAR AT THE TOP EITHER BLANK OR 'On My Computer' being shown. Scroll down and select PINTRA51/PSVR/RTP/EPADOM (This selection appears right above "Other...")



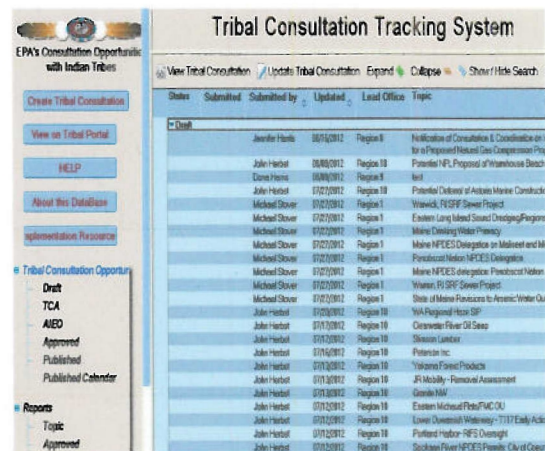
4. Scroll down and SELECT the OITA folder- Click Open



5. The Tribal Consultation Tracking System appears-
6. CLICK OPEN- to access database



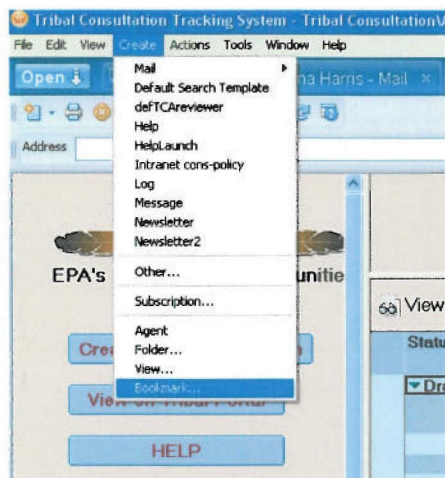
[NOTE THIS APPLICATION IS NOW STORED ON YOUR LOTUS NOTES WORKSPACE]



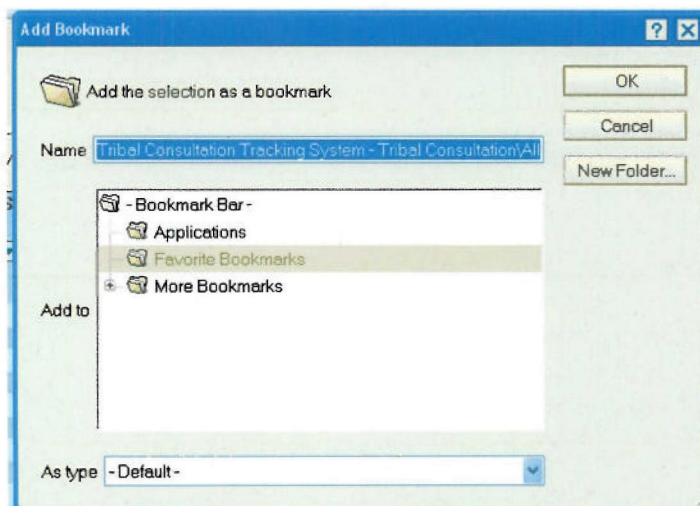
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IF YOU WANT TO BOOKMARK THIS APPLICATION

1. While in the database. Select Create from the LN file menu AND select BOOKMARK

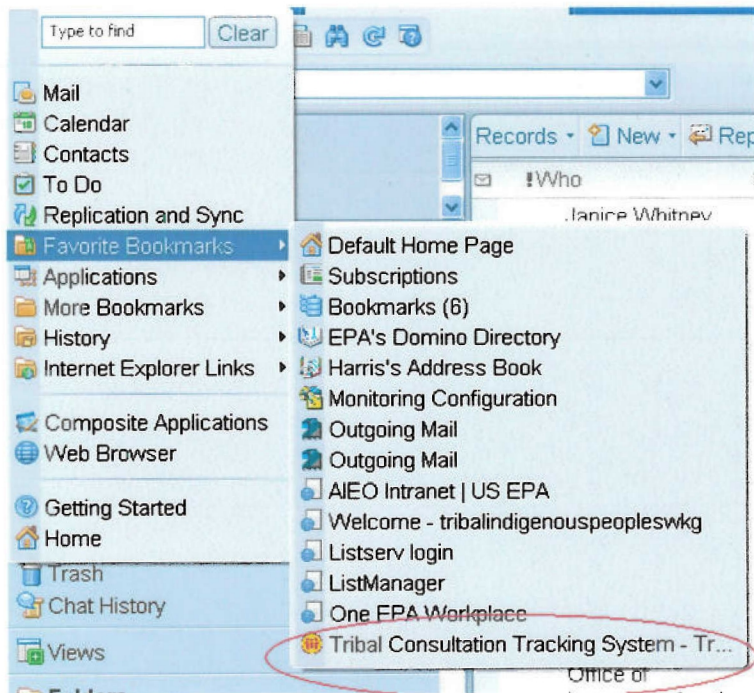


2. Highlight Favorite Bookmarks- and CLICK – OK



3. To Check Bookmark – Go back to the BIG ARROW and Scroll down to FAVORITE BOOKMARKS. The Tribal Consultation Tracking System should appear as the last entry.

Accessing and Bookmarking EPA's Internal Tribal Consultation Tracking System



4. Problems call CTS